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COMMITTEE ON APPROPRIATIONS

February 17, 2005

LB 421, 422, 423, 424, 425, 426, 427, 428

LB 183, 184, 398, 659

The Committee on Appropriations met at 1:30 p.m. on Thursday, February 17, 2005, in Room 1003 of the State Capitol Building, Lincoln, Nebraska, for the purpose of conducting a public hearing on the following legislative bills: LB 421, LB 422, LB 423, LB 424, LB 425, LB 426, LB 427, LB 428, LB 183, LB 184, LB 398, LB 659. Senators present: Don Pederson, Chairperson; Lowen Kruse, Vice Chairperson; Chris Beutler; Jim Cudaback; Pat Engel; Lavon Heidemann; Marian Price; John Synowiecki; Nancy Thompson. Senators absent: None.

SENATOR D. PEDERSON: (Recorder malfunction)...and I will introduce those who are here today. On my...well, on my immediate left is Mike Calvert, who is the Legislative Fiscal Analyst; and next to him, Senator Lowen Kruse from Omaha; next to him, Senator Pat Engel from South Sioux City; Senator Jim Cudaback from Riverdale; and Senator Lavon Heidemann from Elk Creek; and on the right, the charming Marian Price from Lincoln, Nebraska. I'm Don Pederson; and walking in swiftly, the late Nancy Thompson. (Laugh) So, I would call this to order, and the first order of business is a group of bills by the Governor's Office, and we are graced with the presence of Gerry Oligmueller, who is going to, I think, take these as a group rather than one at a time. Is that correct?

LB 421-428

GERRY OLIGMUELLER: Sure, if that would be okay with the committee.

SENATOR D. PEDERSON: Okay. And his testimony is being delivered around so that you will have a copy of that to look at, and he won't necessarily have to go through each item that he's written, unless he wants to.

GERRY OLIGMUELLER: (Exhibit 1) I'll just pick on some key points, how's that, and keep it brief.

SENATOR D. PEDERSON: That would be fine. That would be better.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 2

LB 421-428

GERRY OLIGMUELLER: I know you've spent four weeks as a committee looking over everything that's in these seven or eight bills, so we'll just try and hit on a couple of high points. Good afternoon, Senator Pederson and members of the Appropriations Committee. For the record, my name is Gerry Oligmuller. I'm the state budget administrator and administrator of the Administrative Services Budget Division. My last name is spelled O-l-i-g-m-u-e-l-l-e-r. I'm appearing here today on behalf of Governor Heineman in support of LB 421 through LB 428, which constitute the major portion of the Governor's budget package. I will offer testimony at a later date in the Judiciary Committee in support of LB 429, which was referred to that committee. LB 429 increases the court automation fee for the courts, and eliminates the January 1, 2007, termination date for collection of a \$2 court fee which is credited to the Law Enforcement Improvement Fund, or LEIF fund. These issues will also be addressed by the Supreme Court and the Crime Commission when they appear for their budget hearings in this committee. Nebraska's economy and the fiscal outlook have changed remarkably from our experiences these past three years. However, the challenge of the past three years sort of underscores the critical importance of fiscal discipline and the financial imperatives we urge the committee to sustain for this biennium...(Recorder malfunction)...positive structural balance between net General Fund receipts and General Fund appropriations; and three, rebuilding the Cash Reserve Fund to protect against future possible adverse financial problems. The Forecast Board meets on Friday, February 25...cutting to the chase here...to review the forecast of net General Fund tax receipts for fiscal years 2005, 2006, and 2007. It's possible, some would say probable, that there will be upward revisions in the forecasts for all three years. There will be many who advocate that the committee and the full Legislature spend these additional...all the additional tax receipts forecasted by the board. The Governor urges the committee and the full Legislature to adhere to the fiscal discipline and to sustain the financial imperatives outlined earlier in my testimony that have served us well in the past. Also, it is very important to take a long-range view past the next and the following biennium, and forward the next 10 and 20 years. Let's plan a sound financial future and not let near term demands put us with a result of an

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 3

LB 421-428

unsustainable spending path. I do need to offer a technical amendment to conform the so-called transfer bill, which is LB 426 in the package, to the Governor's announced recommendations. Our drafting of that legislation failed to include transfers to the General Fund of about a million dollars in fiscal year '06 from four cash funds at the Department of Environmental Quality, as recommended by the Governor. This technical amendment also includes language to properly codify an existing construction fund, known as the Nebraska Capital Construction Fund, and language necessary to update another construction fund, the State Building Fund, which is really the General Fund appropriations for capital construction. I have provided this amendment to your committee clerk for your consideration. On behalf of Governor Heineman, I do want to share how much we appreciate the hard work of this committee. The Governor, his staff and representatives from state agencies under the Governor's control will continue to be available to you as you work over the next several weeks to finalize your recommendations for the upcoming biennium. I'd be happy to answer questions you may have about LB 421 through LB 428.

SENATOR D. PEDERSON: Are there any questions of Gerry? If not a question, I'd like to make a comment. We understand and we appreciate the cautionary words of the Governor concerning staying within the confines of what is prudent as far as spending. We know there will be a lot of demands on these funds, but we also know that we require a sustaining value to our economics in this state, so...and I, on a personal note for the Governor, I want you to know how much that I have appreciated working with him and his willingness to visit and discuss the issues as we go forward, and I know that will continue.

GERRY OLIGMUELLER: I appreciate those comments, and I'll make certain I relay those back to the Governor as well.

SENATOR D. PEDERSON: Thank you. Any questions? Further comments? Okay. Thank you.

GERRY OLIGMUELLER: Thank you very much.

SENATOR D. PEDERSON: Are there any other proponents for this bill? Any opponents? Any neutral testimony. I know

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 4

LB 183, 184, 421-428

that there are some people that are interested in these bills as they go through, and there will be time to comment on the individual items within the bills when the appropriate hearings come up. So, with that, I will close the hearings on the respective bills of the Governor that were just presented. Thank you. The next bills are mine. Senator Kruse, would you take over?

LB 183

SENATOR KRUSE: All right, I would open the hearing for LB 183. Senator.

SENATOR D. PEDERSON: Senator Kruse and members of the committee, my name is Don Pederson, representing of District 42. LB 183 simply deletes obsolete language from the Cash Reserve statutes. The deleted language generally refers to transfers that have already occurred and prior year deposits from federal general assistance aid. The Appropriations Committee will be able to use LB 183 at a later date as a vehicle for making transfers to the Cash Reserve and such other matters as may come before the Legislature. It's really more form than substance at this point, but it allows us to make these transfers.

SENATOR KRUSE: Okay. Thank you. Are there questions for our sponsor? I see none. I thank you. Are there proponents, other proponents of the bill? Any opponents that wish to speak? Anyone in a neutral position? Want to introduce Senator Synowiecki, who is just joining us. Do you wish to close?

SENATOR D. PEDERSON: I'll waive closing.

SENATOR KRUSE: Senator Pederson waives closing, so this hearing is completed. We now go to LB 184.

LB 184

SENATOR KRUSE: Proceed.

SENATOR D. PEDERSON: Good afternoon, members of the Appropriations Committee. For the record, my name is Don

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 5

LB 184

Pederson, representative for District 42. LB 184 creates a cash fund to receive funds to make payment for the settlement of the low-level waste lawsuit. The State Treasurer shall use the funds to make settlement payment in accordance with the consent judgment in the case of Entergy Arkansas, Inc. et. al. v. State of Nebraska, Docket Number 4:98CV3411. The fund shall receive revenue from fees, charges and other revenue sources designated by the Legislature for the deposit into the fund. The fund shall be used only for the purpose of appropriation authority of the Legislature, and is not subject to any administrative adjustment. As always, any money in the fund available for investment purposes shall be invested by the State Investment Council, pursuant to the Nebraska Capital Expansion Act and the Nebraska State Fund Investment Act. I respectfully request your support of LB 184.

SENATOR KRUSE: Are there questions for Senator Pederson? I'm assuming all committee members have heard of this subject before?

SENATOR D. PEDERSON: Just as a side note, this is simply the procedure whereby we set up a fund in order to accomplish the settlement in this matter and it will be subject to appropriation at a proper time.

SENATOR KRUSE: It will come back to us.

SENATOR D. PEDERSON: Yes.

SENATOR KRUSE: Are there other proponents of the bill? Are there opponents who wish to speak? Anyone in a neutral position? I see none. Do you wish to close?

SENATOR D. PEDERSON: No, I would just say that I know there are people here that are interested in the...this particular legislative bill simply from the standpoint of knowing that it's going to occur, and they are not going to necessarily make any statements at this time, but they're just wanting to be knowing that it is taking place. And I waive closing.

SENATOR KRUSE: And this serves...thank you. This serves as notice that it is taking place, and this completes/closes the hearing on LB 184. Thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 6

LB 398

LB 398

SENATOR D. PEDERSON: Is there anyone here to present Senator Beutler's bills? So let's stand at ease for a moment till we can locate where Senator Beutler is.

EASE

SENATOR BEUTLER: Gosh!

SENATOR KRUSE: Yes. Yes.

SENATOR BEUTLER: You zipped right through them, huh?

SENATOR PRICE: We're fast and we're good. Yes.

SENATOR ENGEL: That gives you an idea of what we're expecting.

SENATOR D. PEDERSON: We plan to continue that procedure.
(Laughter)

SENATOR SYNOWIECKI: We'll keep you on the same time frame.

SENATOR PRICE: Yes. Short and to the point.

SENATOR D. PEDERSON: We next have LB 398 by Senator Beutler. Senator.

SENATOR BEUTLER: Mr. Chairman, could I ask an indulgence? My staff is making copies of...oh, you have the copies. Okay. They're ahead of me.

SENATOR KRUSE: Well, what else is new?

SENATOR BEUTLER: Yeah. Well, that's about right. What else is new?

SENATOR THOMPSON: I thought you were going to ask us, what is this bill? (Laugh)

SENATOR BEUTLER: You thought what?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 7

LB 398

SENATOR THOMPSON: You were going to ask what the bill was.

SENATOR BEUTLER: (Laugh) That's what everybody else is asking.

(UNKNOWN FEMALE): Those aren't the copies. That's information for the next bill.

SENATOR BEUTLER: Those are not the copies?

(UNKNOWN FEMALE: I guess not.

SENATOR BEUTLER: (Exhibits 2 and 3) Okay. Well, let me go without my two exhibits and I'll try to describe them to you and come back later. The bill has to do with accounting for the use of federal funds in our budget. You know, we have a budget that's really closer to \$6 billion than \$3 million because we have this enormous amount of federal money that's coming through the process, and my observation is that historically our committee, relatively speaking, pays little attention to the federal money. Our big concern, naturally, is with the state money, the General Fund money specifically, and I don't think we do justice to the whole federal money side of the budget. There...the two exhibits that will be passed out to you when we get them are reminders of what we do...thank you, Maja...reminders of what we do in our budget process. In our budget documents we have language with regard to personnel services and language with regard specifically to federal funds. On personnel services we say, for example, total expenditures for permanent and temporary salaries and per diems shall be limited to the amounts shown, except when federal funds in excess of the amount shown are available and approved by the Governor. Expenditures for permanent and temporary salaries and per diem from such grants shall be in addition to the limitation on permanent and temporary salaries, and so forth. And then it has the hopeful statement at the end: No agency shall request any state funds for continuation or replacement of such...of any such personnel or activities in state funds. So, you know, basically we say there whatever comes in, in federal monies, use it; no limitations on personnel. The other handout is a typical budget provision that deals specifically with federal funds in a more generic sense, broader sense, that is. It says the receipts for '03-04, '04-05 inuring to the several federal funds,

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 8

LB 398

dah-dah, dah-dah-dah, are credited to such funds respectively. Expenditure of federal funds appropriated in this act shall not be limited to the amount shown, even. So whatever comes in, you can spend; any federal funds not otherwise appropriated, any additional federal funds made available to the credit of the State Treasurer and so forth, basically giving the agencies very broad latitude with regard to federal funds. There are several reasons why I think we should get a better handle on it. Some federal programs, such as homeland security that has recently come down to us, give very substantial latitude as to how money can be allocated, even as between local governments and state governments. That allocation, in my opinion, should be the choice of the Legislature, not the executive branch, to the extent that there is latitude. And we are essentially giving that authority away by virtue of the broad language in our budget bill. The allocation, I think, should be our job and our responsibility. Projects at the top of our collective need list, which could be funded with federal funds possibly, run the risk of being subordinated to other priorities of the executive branch and left unfunded. Secondly, not knowing the...not having a good idea of the discretion included in major federal appropriations I think blinds us in another way. We have a diminished independent knowledge of how state funding might leverage additional federal funds. If we spent \$1 million here rather than there, might we get more, more federal money? Can we really answer the question of whether the executive branch is doing a good job of leveraging funding? I think many of you were taken aback, as I was, when the mental health reform came down from the executive branch last year and all of a sudden there was a way to get several million dollars more of federal funds, an option that I, for one at least, was not aware of at the time. Wouldn't it be interesting if our Fiscal staff could inform us of the different options within their areas where there was federal funding that was discretionary to some extent? Finally, it appears at the federal level right now that the advent of even broader federal block grants are coming down, is upon us and is really going to give us more latitude and flexibility as to how money is spent, but also caps the money spent by the federal government to the states at the same time. That process will force us to make some very hard decisions in the near future and those choices, I think, should be the conscious choices of the Legislature.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 9

LB 398

They should not be passed on to the executive branch simply because the money shows up in certain programs in a Governor's budget and the Legislature, unaware of choices, rubber-stamps the allocation. So that's a statement of the problem, as I see it. Stating the problem for me is much easier than stating the solution. Even with the able help of our Fiscal staff, I'm not satisfied with the language of LB 398, as it appears, but I decided to file the bill anyway to signal a serious intent to get a better resolution to the problem and to encourage all state agencies to come forth with whatever problems they may perceive with the language of the bill, and hopefully with some language suggestions that helps us resolve and refine the bill. I wanted to just go through the bill real quick, Mr. Chairman, if I still have a couple minutes.

SENATOR D. PEDERSON: Sure, go ahead.

SENATOR BEUTLER: It's very difficult language to craft. I'm certainly not intending in any way to affect, like, normal allocations to the Department of Roads for road funds, where their use is very specific. I'm not particularly interested in the University of Nebraska, given its governance authority under the constitution. And it's hard to define what I'm interested in, but I'm interested in those things that come down that have a significant measure of latitude. So it says: "Whenever funds are received from the federal government or any agency thereof by the Governor or by any state agency in excess of \$500,000," I don't want to...I kind of want to start from the top down and just deal with the big programs. Maybe that's all we should ever deal with, "in any grant or allocation which was not the result of a competitive granting," I think if you cut out all the competitive grants and those types of federal allocations, and you also cut out federal allocations that are for one single purpose, you've probably cut out most everything that's coming down, "and such funds have not been appropriated for a specific program," that word probably needs further refining, "the use of such funds shall be approved by the Legislature prior to expenditure." I think probably "obligation" would be a better word there. But the idea, I think, is clear that the Legislature should have some involvement with regard to particular types of funds. And then I have to deal with the fact that we're a citizen legislator and we don't meet full-time, and I'm not even

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 10

LB 398

sure what the authority of the Appropriations Committee is in the interim, but the language I came up with, with regard to the problem of approval: "If the Legislature is in session at the time such funds can first be obligated, the use shall be approved by specific appropriations prior to obligation. If the Legislature is not in session or if the Legislature is in session but the appropriation cannot be reasonably included in an appropriations bill or a related bill, the use should (sic) be approved by the Executive Board of the Legislative Council." Then, and the Chair of the Appropriations Committee, by virtue of his position, is on that council and usually one or two other members of the Appropriations Committee. If it's possible for the Appropriations Committee to review it, I'd be more comfortable with that. Finally then, I think you have to deal with the situation of what if, for some reason, the federal government needs an answer or funds need to be obligated before the Legislature can act, and so I included a sentence that says, "If an emergency is declared by the Governor in writing, the funds may be obligated prior to legislative approval if a report on the obligation is filed within ten days after receipt of funds with the Executive Board and the Appropriations Committee." So that's how far I've gotten so far, and I'm very interested in your reactions. Thank you.

SENATOR D. PEDERSON: Thank you. Well, Senator Beutler, I do recall that when this first came up in our discussions here, you were very concerned about the application of homeland security funds and how that was expended, and I know you've given us cautionary concerns about the wording of this and if you read it, it's pretty hard to exclude some of the things you say were intended to be excluded, such as roads and things of that nature. I mean this is a broad brush to go into a matter of all federal funding and could get into things like research grants at the Med Center and things of that nature. So it would need to be pretty carefully crafted so that it didn't create that kind of a problem, and I question whether we've gotten there yet. But...

SENATOR BEUTLER: Oh, I think we definitely have not. I would...

SENATOR D. PEDERSON: I understand your concerns, but I also

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 11

LB 398

understand that we're talking about putting something into legislative enactment that could unintentionally restrict things unduly, and I'm concerned. Does anyone have any questions?

SENATOR BEUTLER: No, I wouldn't suggest that we advance it without considerable further work.

SENATOR D. PEDERSON: Yes.

SENATOR BEUTLER: And time will tell how much...

SENATOR D. PEDERSON: I'm sure that's...

SENATOR BEUTLER: ...effort that may take.

SENATOR D. PEDERSON: ...I'm sure that will happen that way, yes.

SENATOR BEUTLER: Okay.

SENATOR D. PEDERSON: Are there questions of Senator Beutler? Senator Engel.

SENATOR ENGEL: The...where you highlighted on this LB 407, as far as, "No agency shall request any state funds for continuation or replacement of any such personnel or activities in future budget requests," in other words, if we get a grant, that's it; they're not going to obligate us to come up with it when the grant runs out, right? Is that what you're saying there?

SENATOR BEUTLER: Well, that's not my language. That's the language that we put into the bill. And I think that's what it's intended to mean, but, as you know, that doesn't always happen.

SENATOR ENGEL: It should. Thank you.

SENATOR D. PEDERSON: Are there other questions for Senator Beutler? I think this is...could be describe as a work in progress. We do understand your concern and the question would be whether we could fashion something that would meet specifically those concerns.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 12

LB 398

SENATOR BEUTLER: Yeah. Well, it is a big item and what's coming down in federal block grants, Mr. Chairman, is going to be an enormous problem, I think, and they're talking about bunching disparate programs together now that have never been bunched together before, and there are going to be huge choices there as to where the money is allocated.

SENATOR D. PEDERSON: We definitely don't want to delay unduly the natural progress of things, but we...your bill tends to look to us for oversight in some of these matters. Okay. Are there other proponents for this bill? Are there opponents for this bill? Is there neutral testimony? I think we've seen you before.

GERRY OLIGMUELLER: Yes. Senator Pederson and members of the Appropriations Committee, for the record, my name is Gerry Oligmuelier, last name spelled O-l-i-g-m-u-e-l-l-e-r, and I comment Senator Beutler yesterday that I...the bill got my attention and I felt I'd be remiss if I didn't make myself available to talk about it and certainly to work with the committee to the extent you want to explore this topic of federal funds. It gets to be quite a complex discussion. So I'm appearing here today merely in an informational capacity. I probably would first point out that the current Nebraska law does provide an opportunity for the executive branch and legislative branch to work together as it relates to the existing biennial budget process and, for that matter, the interim...what's referred to as deficit or supplemental budget process. To highlight for to direct the kind of information that state agencies bring forward as a part of their budget requests, Section 81-1113.01 of current Nebraska law affords the Legislature, through the Fiscal Office, an opportunity to shape with us the budget instructions that go to state agencies. So there is an excellent vehicle, I believe, in place to identify or seek improvements in how information comes forward, particularly as the federal funding landscape changes perhaps over the next few years as the Congress deals with their own fiscal exigencies at the federal level. There are going to be those situations, I suspect, in any event where funds are made available during that interim period between that formal biennial budget process, the hearings the committee conducts, and the legislation that you forward to the full Legislature for consideration. My concern with the bill, as drafted, comes down to the fact that federal funds come to

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 13

LB 398

us in a variety of different matters...or manners. Sometimes it's a consequence of direct...a direct formula allocation of federal money. Sometimes it's a consequence of a claim submitted by state agencies for reimbursement for the provision of services. Sometimes it's competitive...a competitive granting process, as is referenced in the bill. Other times it comes in what people I think routinely refer to as an award. And so there's a variety of terminology and methods with regards to how the federal funds are made available, how we're expected to seek them, and the manner in which and the amount that's provided to the state of Nebraska. So it's difficult, clearly, to draft language for a bill such as LB 398 that's going to be easily workable given the varied situations that exist. The one thing that seems clear to me as I looked at it is that if there is a requirement in a circumstance like that for an interim review and approval by the Legislature, we'll invariably have a situation where we are going to miss an opportunity to receive federal funds in Nebraska for the benefit of our citizens in one context or another, and that's simply because we are presented with opportunities from time to time that are not anticipated to which the federal government has their own deadline or time frame. Interestingly enough, that often is towards the end of the federal fiscal year, where a federal agency might be looking to obligate funds, and we have situations where agencies are approached by a federal agency and the expectation is they can get prompt consideration and provide a response almost immediately before they will walk those monies to another state for consideration. So the flexibility in Nebraska has aided us in responding in a timely manner when those opportunities are presented. I'm not here, however, to testify that the Legislature shouldn't have, you know, a role in the review, approval, and use of federal funds. So it's certainly something we're willing to continue to visit about and find where there might be ways to improve how that information is presented and how your role might be more concerted, more involved in the use of federal funds in Nebraska, because they are significant. Senator Beutler made a couple of, I think, cogent points with regards to the fact that when they're blocked, the state is generally given additional flexibility regarding their use, and sort of caveat on that is they usually do not increase the amount of the block going forward. So the flexibility is good for a period of time and then the difficulty ensues in future

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 14

LB 398

financing. Two recent examples in Nebraska would be probably a couple of decades ago the social services funding for Nebraska was block granted and it has essentially not increased since that period of time, although we know that the cost and the demand for services in some of those areas have grown phenomenally. The TANF block grant under welfare reform was another such example where the amount of funding is fixed and the increased costs are borne by the state, or at least presented to us in the form of a budget request to be borne by the state as those services go forward. So it's a complex area. There's a lot to be considered and discussed and I'm here to enjoin that discussion. So if there's any questions, be glad to answer them.

SENATOR D. PEDERSON: This is not a question necessarily, but more a comment. I think the things that you have pointed out pretty much fit in with what Senator Beutler was saying, the difficulty of trying to make one law that will apply to all the circumstances that will come up. And I think I appreciate your mentioning the various circumstances that can come before you and the time limitations perhaps that will be invoked in some of those matters, so. Senator Synowiecki, did you have a comment or question?

SENATOR SYNOWIECKI: I appreciate your testimony.

GERRY OLIGMUELLER: Sure.

SENATOR SYNOWIECKI: You seemed to give some examples of...

SENATOR D. PEDERSON: John, I think you need to speak into the microphone or they won't hear you.

SENATOR SYNOWIECKI: You gave some examples during your testimony how perhaps legislative involvement in this process, as Senator Beutler is proposing, may provide for barriers to drawdown some federal funds. But couldn't it also be the case that this would provide a vehicle to drawdown additional federal funds? In the sense that I recall specifically Department of Corrections, two or three years ago, there was a federal opportunity for reentry month. Forty-nine states drew down that money; one didn't. It was the state of Nebraska. You know, perhaps if there's more dialogue with members of the Legislature relative to the availability of federal grants, it may enhance our

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 15

LB 398

drawdown opportunities.

GERRY OLIGMUELLER: Well, I think the more information and the more of us who are familiar with that information particularly regarding federal...the availability of federal funding, the greater likelihood it is we'll see the opportunities that are presented. Because federal government is big and, you know, the grants cut...the available funds cut a pretty wide swath across all the federal agencies. So I think the more dialogue we have on it...

SENATOR SYNOWIECKI: Yeah.

GERRY OLIGMUELLER: ...the more likely it is...

SENATOR SYNOWIECKI: It just...

GERRY OLIGMUELLER: ...that we'll identify those opportunities.

SENATOR SYNOWIECKI: Yeah, it just seems your testimony was kind of bent towards the barriers that this type of proposal would behold; however, I think there's another side of that where, particularly with the SAMHSA grants for substance and abuse and mental health, I know Nebraska rates very poor, very low relative to drawdown on some of them funds as well. So, thank you for your testimony.

GERRY OLIGMUELLER: Yeah. Uh-huh.

SENATOR D. PEDERSON: Any other questions? It looks like it's a work in progress in any event, so I'm sure that Senator Beutler will be glad to work with you and see if we can work through some of the details. Thank you.

GERRY OLIGMUELLER: Thank you.

SENATOR D. PEDERSON: Any other neutral testimony? Okay. We will close the hearing on that particular bill. Oh, I'm sorry, did you want to have a closing?

SENATOR BEUTLER: No.

SENATOR D. PEDERSON: You want to waive your closing?

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 16

LB 398, 659

SENATOR BEUTLER: You were reading my mind, Senator.

SENATOR D. PEDERSON: (Laugh) Okay. Then we will close on that particular bill, and the next item is again Senator Beutler. And this is LB 659? LB 659, Senator Beutler.

LB 659

SENATOR BEUTLER: LB 659. Thank you, Mr. Chairman. This piece of legislation follows a performance audit that was done by the Performance Audit Committee earlier this year and last year, and requires a report from Health and Human Services. I'm not one that generally likes to be requiring reports, and every year we...seems like we have bills that do in old reports that are not needed anymore, but this is a particularly important area. It has to do with the Department of Health and Human Services Finance and Support, and their tracking of dollars and their billing processes with regard to Medicare, Medicaid, and private health insurance companies. It's their whole system for obtaining reimbursement from insurance companies, for example, and it's...and it involves large amounts of money. You may have noticed in our budget this year the expected reimbursements are in the millions of dollars. So we wanted to get a handle on information that they have not...that was not currently available in the performance audit, and it's information that we think is valuable both from the point of view of a performance audit, a Legislative Performance Audit Committee, but also valuable as a management tool within the agency; that is, compiling, as they can do now with their computers, information with regard to their collection process and collection information as set forth in the bill. So I'm going to have the Performance Audit Unit testify and tell you a little bit about what we did and why this report is important. I think it will be important as an ongoing kind of resource of information that will help us more quickly get a handle on what's happening in an important area. There's one other item, though, that I wanted to comment on and it's the very last sentence in the bill. It says, "In the first report," and we're anticipating an annual report here, but it says, "In the first report...the division shall include a proposal for an employee incentive program in which department employees are provided a

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 17

LB 659

financial incentive in order to maximize the collection of payments from Medicare, Medicaid, and private health insurance companies." We've heard some big reports about other states involving themselves or experimenting with programs that incent...incentivized...is that a word? I've never...

SENATOR D. PEDERSON: Uh-huh, it is.

SENATOR BEUTLER: ...quite decided...

SENATOR D. PEDERSON: It is now. (Laugh)

SENATOR BEUTLER: ...whether...it is now.

SENATOR KRUSE: It is now a word.

SENATOR ENGEL: It's a "Beutlerism," "Beutlerism."

SENATOR THOMPSON: Deb Suttle used to say that a lot.

SENATOR BEUTLER: You get the gist of it though. And we didn't have enough information or enough knowledge to make a specific suggestion on it, but we said, well, why not have them do the research and see if they can come up with an idea that might help us provide the kinds of incentives that would really get this unit going at its maximum level and maximize the return of dollars. If there's any place in government where such a program might be able to be devised and be useful and be fair, it would seem to be in the collection division of Health and Human Services. So we asked them to come up with a proposal in that regard. And that's all I wanted to say on it, Mr. Chairman.

SENATOR D. PEDERSON: Are there any questions?

SENATOR BEUTLER: And if you could entertain the Performance Audit Committee here for a few minutes, they will be the rest of my testimony.

SENATOR D. PEDERSON: Okay. Okay. And then if you have further, you can do it on your closing.

SENATOR BEUTLER: All right.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 18

LB 659

SENATOR D. PEDERSON: Other proponents? Here comes the Performance Audit group.

ANDREA MICK: Good afternoon, Chairman Pederson and members of the Appropriations Committee. My name is Andrea Mick and...d

SENATOR D. PEDERSON: I'm sorry, I can't hear you.

ANDREA MICK: Okay, I'll speak up.

SENATOR D. PEDERSON: We have these vehicles with square tires that go by here pretty regularly.

ANDREA MICK: (Laugh) I'll speak up a little bit. (Exhibit 2) Good afternoon, Chairman and members of the Appropriations Committee. My name is Andrea Mick and I am a legislative performance auditor. Last year we conducted a performance audit on the Lincoln Regional Center's billing process and our primary purpose of that audit was to find out how much the Lincoln Regional Center bills to third party payers, and in this case it was private insurance companies, Medicare, and Medicaid. And our purpose was to find out how much they billed, how much they received in payments from third party payers, and then how much was denied by third parties. That was our goal, to find those things out. And during the course of that audit, we found some deficiencies in their systems...in that system and, based on our audit, we made some recommendations and if you'll turn to this first handout that I gave you, that is what we call an implementation plan. And based on recommendations that we make, the audited agency is required to submit to our committee an implementation plan which describes in detail how they plan to incorporate our recommendations into a particular process, or into their processes. And I'm not going into all of the recommendations that we made, but I would have you focus your attention on the second finding, which is the primary reason LB 659 was introduced, and that was or that is LRC's computer system, AIMS, is inadequate. That was their computer system at the time that we conducted the audit, and what we found, very briefly, when we went out there was that the system contained payment and billing information, but it was unable to manipulate the information to provide us with totals, and we found that to be a concern that they could

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 19

LB 659

not do this. So we were then, I'm told, that their new system, AVATAR, would be able to do that and, in conversations that we had, I think there was disagreement about whether the system would or would not actually do this. So, not knowing if AVATAR would be able to do this, we suggested that staff maintain very simply an Excel spreadsheet that could track this information on a per person basis and in the aggregate. At that time, when we made that recommendation, one of the mid-level managers that we were working with expressed that he didn't really know that he felt that that was necessary. And so that bothered us and I think that was basically why we thought LB 659 was needed, because if that should happen again there would be some backup, there would be some enforcement. Now, I will say that the implementation plan that we received from HHS, it looks very, very good, and I think we are pleased with it at this point, especially with recommendation number two. They have started to keep an Excel spreadsheet, as we asked, and they have assured us that AVATAR will be able to track that information, and if that's the case, that is great and we are pleased with that. It's just our concern is if someone else comes in there with a similar feeling, I don't, you know, I don't know that they would require their staff to do that. So that was...that was our primary concern and a lot of what LB 659 was based on. I'll be glad to take any questions if you have any, try to answer them.

SENATOR D. PEDERSON: If you couldn't track it, how could they?

ANDREA MICK: Well, what we did is we had the staff that we were working on, they had to print off several of the patient's information and we had to hand enter it into an Excel spreadsheet, and that's how we came up with our totals. So, like I said, they had the information. It was just in an unusable form at that point.

SENATOR D. PEDERSON: As much money as we spend on computer equipment, you have to do it in handwritten form.

ANDREA MICK: And, like I said, that was at that time, so I don't know what their new system has.

SENATOR D. PEDERSON: Okay. That was just an observation on my part, not necessarily a question. Senator Engel.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 20

LB 659

SENATOR ENGEL: Well, there was just a lot of money wasn't being collected, right, that should have been collected?

ANDREA MICK: And I have the report here, so if you're interested, there was, as best as we could tell, there was substantial amounts going uncollected. And again, if you're...

SENATOR ENGEL: Do have any ballpark figure or anything like that?

ANDREA MICK: I would be hesitant. Probably near a million dollars, probably, I would say, but I would have you refer to the report.

SENATOR ENGEL: No, that's fine. I (inaudible) ball park.

ANDREA MICK: And again, I could get you a better...

SENATOR ENGEL: You know a million here, a million there, it adds up to the (inaudible).

SENATOR D. PEDERSON: Are there other questions? Are you satisfied with the direction it's going now?

ANDREA MICK: I believe that if they incorporate the processes that they have described in this implementation plan, I believe there's a good, you know, a solid start. But it may be something that we would want to go back and review as the process was implemented.

SENATOR D. PEDERSON: Uh-huh.

ANDREA MICK: To me, the policy that they have described here looks like a very good start.

SENATOR D. PEDERSON: Okay. Other questions? Sounds like you're on the right path.

ANDREA MICK: I believe so.

SENATOR D. PEDERSON: It's a good thing we have a Performance Review Committee. Okay. Thank you.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 21

LB 659

ANDREA MICK: Thank you.

SENATOR D. PEDERSON: Other testimony? Other proponents? Are there opponents? Is there neutral testimony? Here we go.

WILLARD BOUWENS: (Exhibit 3) Good afternoon, Senator Pederson and members of the Appropriations Committee. I am Willard Bouwens, spelled B-o-u-w-e-n-s, and I am the financial service administrator for the Department of Health and Human Services Finance and Support. I am here to testify in a neutral capacity to provide information on what steps HHS has taken relating to the billing and payments at the Lincoln Regional Center. The reporting requirements in LB 659 were first addressed, as was just mentioned, in an audit report by the Performance Audit Section of the Legislative Research Division in December of 2004. I would like to thank Senator Beutler and the Legislative Performance Audit staff for their recommendations on improving the billing process at the Lincoln Regional Center. HHS has implemented several changes in response to that audit. These changes will also address the required reporting requirements of LB 659. Staff from Health and Human Services, and Health and Human Services Finance and Support developed written guidelines that became effective November 2004 relating to the billing for services at LRC. A copy of that is attached to this testimony for you to review. The Lincoln Regional Center's current computer system, which is called AIMS, tracks dollar amounts billed and payments received for Medicare, Medicaid, and private insurance companies; however, this system does not compile the amounts that are not paid. HHS has purchased a new computer system, called AVATAR, which is being programmed and worked on at this time. This new system was purchased to, one, meet the new HIPAA requirement, but as a more robust system, it also allows us to address the issue of compiling these amounts that are not paid, as required by LB 659. The new AVATAR system is being programmed to ensure that reports can be run to identify denied claims in the amount...and amounts, and to use as a management tool for staff at Lincoln Regional Center. The features in AVATAR will provide tracking and compilation reporting as required by this bill. In addition, Health and Human Services Finance and Support has hired an administrator to oversee the billing process at the regional centers. This

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 22

LB 659

administrator will be part of the regional center monthly management team meetings and would be responsible for submitting the required report in LB 659. I will be happy to answer any questions you may have.

SENATOR D. PEDERSON: Senator Engel.

SENATOR ENGEL: Who did the overseeing before you hired this new person?

WILLARD BOUWENS: We had an administrator before, but they were not a part of or had any responsibilities with the regional center staff, which are the medical record and the administration staff, and as a result of the audit report and the recommendations, we decided that was a good decision to have that person a part of those management teams.

SENATOR D. PEDERSON: Senator Price.

SENATOR PRICE: It's being programmed at this time. What is the anticipated date that it's going to be up and running?

WILLARD BOUWENS: I do not believe a specific date has been set for the first facility to go on this. Lincoln will be the first facility that will use it, but there has not been a date set for it to be up and running.

SENATOR PRICE: I'm saying is it going to be months or a year?

WILLARD BOUWENS: It's going to be months, is my understanding.

SENATOR D. PEDERSON: Other questions? Mr. Bouwens, how long have you been in your capacity?

WILLARD BOUWENS: Since Health and Human Services was organized in January of 1997.

SENATOR D. PEDERSON: Okay. Any other questions? Thank you.

WILLARD BOUWENS: Thank you.

SENATOR D. PEDERSON: Is there other neutral testimony? If

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 23

LB 659

not, Senator Beutler, would you like to close?

SENATOR BEUTLER: There's some additional information that I will pass around to you, and I just wanted to mention the idea that's at the end of the bill with respect to incentive programs. They're starting to talk about it around the country. It's talked about under the name GAIN, GAIN sharing, and described as a bonus incentive program designed to improve productivity through employee involvement with the gains from working smarter shared between the employer and the employees. It mentions that it's more widespread in the private sector than the public sector, as you might expect. But interestingly enough, AFSCME, the employee organization, indicates on this particular document that gain sharing may offer a viable alternative to the trends of contracting out and competitive bidding. In other words, it looks like various segments of interest are willing to work on that kind of an idea. So I hope the department is interested in exploring it seriously.

SENATOR D. PEDERSON: This whole item came up when, when you became aware of the concerns out there?

SENATOR BEUTLER: The...

SENATOR D. PEDERSON: For the performance audit.

SENATOR BEUTLER: Oh, Senator, I hope I'm remembering accurately, but more than a year ago now. I can get that information for you when...and track the...

SENATOR D. PEDERSON: Okay. Well, I recall reading about it in the newspapers and...

SENATOR BEUTLER: Yeah.

SENATOR D. PEDERSON: ...the concern that was expressed. Are you receiving the cooperation that's necessary in order to fulfill this requirement?

SENATOR BEUTLER: Absolutely. It's...I mean, personally, I have to say it's been like a sea change since Mr. Nelson took over. I don't know how to describe it other than that. There's been total cooperation since then, as far as I can discern, and the department seems to be moving ahead in this

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 24

LB 659

area very, very rapidly.

SENATOR D. PEDERSON: I'm real glad to hear that because...

SENATOR BEUTLER: Yeah.

SENATOR D. PEDERSON: ...we're talking about many, many dollars in connection with these programs, I know, and...

SENATOR BEUTLER: Well, it's such a difficult area. I mean if you just think about the fact...think about your own efforts to deal with your own insurance company and insurance and how difficult that can be going back and forth sometimes. And, of course, when it's your money, you put up with it all and you struggle and you go through the exchanges of information and you press them for information and you ask them why and to show you the language and all that, and you pursue your claim. But if you're an employee with Health and Human Services and you don't have the same kind of incentive to dig out some of these claims and to really pursue them and to really, you know, bat them back and forth with the insurance companies until you get your money, it's a hard job and I think it's easy to give up and say, you know, oh well, yeah, we're not covered, or take the easy way out. So finding a way to encourage those people to hang tough on all these claims is important, I think.

SENATOR D. PEDERSON: Do some of the federal programs, like privacy rights and things like that, affect the ability to get some of this information?

SENATOR BEUTLER: They really...they really don't. I haven't seen yet, at least, where the privacy laws have been an impediment in this process anyway.

SENATOR D. PEDERSON: Well, I know we're real glad to know that things are progressing now to get ahold of this situation. Thank you.

SENATOR BEUTLER: Thank you, Mr. Chairman.

SENATOR D. PEDERSON: Thank you for your efforts particularly, Senator Beutler.

SENATOR BEUTLER: You bet.

Transcript Prepared by the Clerk of the Legislature
Transcriber's Office

Committee on Appropriations
February 17, 2005
Page 25

LB 659

SENATOR D. PEDERSON: Any other testimony? If not, I would close the hearing on LB 659, and that is the last bill that we have before us today. Mr. Calvert has some information he'd like to share with us, so we'll do that at this time.